

Articles 28, 29 and 30 – Proposals to Increase Fines for Violations of the Open Container, Keg Licensing and Unlawful Noise Bylaws (Select Board)

*Also attached: Campus and Community Coalition Recommendation,
Recommendations and Data from Amherst Police Department*

Following is the full text of the current Open Container, Unlawful Noise and Keg Licensing bylaws, with proposed deletions indicated by ~~strike throughs~~ and proposed additions indicated in ***bold italics***. The current language is from "General Bylaws of the Town of Amherst Massachusetts, May 2009"

OPEN CONTAINER BYLAW

ARTICLE II – GENERAL REGULATIONS

7. Open Containers of Alcohol (STM - February 26, 1986 - Art. 51)

No person shall consume any alcoholic beverage nor possess or transport any open can, bottle or other container containing any alcoholic beverage outdoors on any town street, sidewalk, way and public property including but not limited to parking lots, parks, school playgrounds, recreation areas, or conservation areas.

Whoever violates this section shall pay a fine of ~~not more than \$50.00~~ ***\$300*** for each violation.

UNLAWFUL NOISE BYLAW

PROHIBITIONS

3. Unlawful Noise ATM - April 27, 1987 - Art. 50)

Section 1. **Unlawful Noise Prohibited.** It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the town of Amherst. The following acts are declared to be loud, disturbing, injurious, unnecessary and unlawful noises in violation of this section, but this enumeration shall not be exclusive, namely:

a) Radio, Phonograph, Musical Instruments and Television. The playing of any radio, phonograph, television set, amplified or musical instruments, loudspeakers, tape recorder, or other electronic sound producing devices, in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office or of any persons in the vicinity.

b) Shouting and Whistling. Yelling, shouting, hooting, whistling, singing, or the making of any other loud noises on the public streets, between the hours of 11:00 p.m. and 7:00 a.m., or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office or of any persons in the vicinity.

c) Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.

d) Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.

Section 2. Exemptions. None of the terms or prohibitions of the previous section shall apply or be enforced against:

a) Emergency Vehicles. Any police or fire vehicle or any ambulance while engaged in necessary emergency business.

b) Highway and Utility Maintenance and Construction. Necessary excavation in or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the Town, or any public utility or any agency of the State of Massachusetts.

c) Public Address. The reasonable use of amplifiers or loud speakers for public addresses which are non-commercial in nature.

d) Noise caused by agricultural, farm-related, or forestry-related activities as defined by M.G.L. Chapter 128, Section 1A, as amended from time to time, including but not limited to the operation of farm equipment, sawmills, harvesting equipment, noises from farm animals, and the like.

Section 3. Penalties. ~~The first violation of this By-Law shall be punished by a fine of not less than one hundred dollars (\$100.00). The second violation of this by-law within 12 months after the first violation shall be punished by a fine of not less than two hundred dollars (\$200.00). Further violations within 12 months after the last violation shall be punished by a fine of three hundred dollars (\$300.00).~~ ***Violation of this by-law shall be punished by a fine of \$300 per offense.*** Each such act which either continues or is repeated more than onehalf (1/2) hour after issuance of a written notice of violation of this by-law shall be a separate offense and shall be prosecuted as a separate offense. If the violation occurs on the premises of rental property which is a non-resident owner, then the owner must also be notified in writing that the violation has occurred.

Section 4. Other Remedies.

a) If the person or persons responsible for an activity which violates Section 1 cannot be

determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

b) If the person or persons responsible for an activity which violates Section 1 can be determined, any person or persons who violate Section 1 of this by-law may be arrested without a warrant, provided that the violation occurs in the presence or view of any officer authorized to serve criminal process.

Section 5. **Severability.** If any provision of this by-law is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the by-law shall not be invalidated.

KEG LICENSING BYLAW

PROHIBITIONS

6. **Keg Licensing** STM - May 20, 1991 - Art. 24)

SECTION 1. **Purpose** To protect the health, safety and welfare of its inhabitants, this by-law shall permit the Town of Amherst to regulate the possession of kegs containing malt beverages, and the dispensing of malt beverages from kegs.

SECTION 2. Definitions

1. **Licensee:** any person, club, partnership, corporation or other entity licensed under the provisions of M.G.L. c. 138 to sell alcoholic beverages, including malt beverages.

2. **Licensed Establishment:** a retail establishment holding a license pursuant to M.G.L. c. 138 section 15 which sells alcoholic beverages for consumption off of the premises; and an establishment licensed pursuant to M.G.L. c. 138 section 12 which sells alcoholic beverages to be consumed on the premises.

3. **Licensed Activity:** an indoor or outdoor activity or enterprise for which a special license has been issued to a responsible manager, pursuant to M.G.L. c. 138 section 14.

4. **Alcoholic Beverages:** all liquids intended for human consumption as a beverage which contain one half of one per cent or more of alcohol by volume at sixty degrees Fahrenheit, including malt beverages.

5. **Malt Beverages:** all alcoholic beverages manufactured or produced by the process of brewing or fermentation of a malt, with or without cereal grains of fermentable sugars, or of hops, and containing not more than twelve per cent of alcohol by weight, including beer.

6. **Keg:** any metal, wooden, plastic, paper or other container designed to hold five and one-half (5.5) or more gallons of liquid and actually containing any amount of a malt beverage.

7. Person: an individual, firm, association, partnership, corporation or other combination of persons, and their agents, servants, employees, stockholders, officers or other person or any subsidiary whatsoever.

8. Sale: any transfer or exchange of alcoholic beverages in any manner or by any means whatsoever for direct or indirect consideration.

9. Dispense: to transfer or exchange alcoholic beverages, including pouring and the providing of access to such beverages, whether or not for monetary consideration.

10. Keg License: a special license issued by the Board of Selectmen of the Town of Amherst to permit the possession of malt beverage in a keg, and the dispensing of malt beverages from kegs, within the Town of Amherst.

SECTION 3. Requirement of License for Keg Possession

1. The Board of Selectmen of the Town of Amherst is authorized to issue keg licenses for the possession and dispensing of malt beverages in kegs within the Town of Amherst. The terms and conditions and fees for licenses granted under this section shall be determined by the Board of Selectmen, as the licensing authority pursuant to this by-law.

2. A keg license shall be required for the possession of a keg containing a malt beverage, and for the dispensing of a malt beverage from a keg, at any place other than a licensed establishment of a licensed activity.

3. A separate keg license shall not be required if the establishment or activity at which malt beverages will be dispensed is licensed pursuant to M.G.L. c. 138.

SECTION 4. Prohibition Within the Town of Amherst, it shall be unlawful for any person other than a licensee at a licensed establishment or activity to sell or dispense a malt beverage from a keg, or to otherwise possess a keg, unless such person has been issued a valid keg license.

SECTION 5. Enforcement This by-law shall be enforced by criminal complaint in the District Court. In the alternative, it may be enforced by the noncriminal disposition process of M.G.L. c. 40 section 21D. For the purpose of noncriminal enforcement, the enforcing persons shall be police officers of the Town of Amherst.

SECTION 6. Penalties Any person who violates Section 4 shall be fined in the amount of \$200 for a first offense and \$300 for a second or subsequent offense *\$300 for each violation.*

SECTION 7. Severability If any section, paragraph or provision of this by-law is held to be invalid or unenforceable, such invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this by-law, which shall remain in full force or effect.

KEG BYLAW: With an increase in the fine for violations of the keg bylaw, the intended outcome is to deter the offense, thus reduce call volume that is associated with the keg parties: unlawful bars, medical calls for intoxication, loud parties, disturbances, and fights. The increased fine will be a deterrent to violators, whereas the current fine structure does not act as a deterrent. The Police Department is in support of this recommendation.

- In FY2010, the Police Department has lost 5 sworn positions (50 to 45), which represents a 10% reduction in personnel. Decreasing call volume is imperative to maintaining safety for the community and police personnel.
- Unlicensed kegs are most often found secondary to a noise complaint. It is apparent that parties where the host provides unlimited drinking, whether for a fee or not, causes disturbance related issued for surrounding neighbors.
- In a detailed review of the last 3 years of TBL Keg Citations, there has only been one instance of a repeat offender. The current system appears successful in deterring repeat offenders, as a 2nd offense is \$300. By increasing all violations to \$300, including a 1st violation, we anticipate that this will deter these 1st violations, and the associated disorder calls that accompany such behavior.

TBL A24 S4: UNLAWFUL POSSESSION OF KEG			
2005	2006		
TBL CITATION	52	TBL CITATION	83
2007	2008		
TBL CITATION	13	TBL CITATION	27
2009			
TBL CITATION	32		

NOISE BYLAW: With an increase in the fine for violations of the noise bylaw, the intended outcome is to deter the offense, thus reduce call volume for the Police Department. The increased fine will be a deterrent to violators, whereas the current fine structure does not act as a deterrent. The Police Department is in support of this recommendation.

- All valid noise complaints must have a reporting party, which is a citizen contacting the police department to complain, clearly identifying the offending location. Noise violations that officers observe during routine patrol, without a complaint from a reporting party, are not considered violations of the noise bylaw.
- Within the last 5 calendar years, on average 8% of the ALL Police Department response to calls is for noise complaints. Noise complaints are the most resource intensive of all call types.
- Within the last 5 calendar years, on average 7% of noise calls received what would be considered a "punitive" response: an arrest, summons or town bylaw violation. The non-punitive actions include warnings to the violators.
- Despite an increase in the total number of violators over the last 2 years, there has been minimal decrease in the amount of noise calls. The punitive actions utilized do not appear to be affecting future behavior (decreasing call volume)
- In FY2010, the Police Department has lost 5 sworn positions (50 to 45), which represents a 10% reduction in personnel. Decreasing call volume is imperative to maintaining safety for the community and police personnel.

2007 TOTAL NOISE CALLS	1,103		2007	
Arrest, Summons or Citation Outcome	51	4.62%	TOTAL VIOLATORS**	119
Residents Warned/other non punitive	1,052	95.38%		
2008 TOTAL NOISE CALLS	967		2008	
Arrest, Summons or Citation Outcome	69	7.14%	TOTAL VIOLATORS**	170
Residents Warned/other non punitive	898	92.86%		43%
2009 TOTAL NOISE CALLS	940		2009	
Arrest, Summons or Citation Outcome	58	6.17%	TOTAL VIOLATORS**	207
Residents Warned/other non punitive	882	93.83%		22%
	5 year	1029		

**most calls have multiple violators/residents



EDUCATIONAL EFFORTS: Each spring and fall, this flyer is distributed to all neighborhoods, in hand to residents, where bylaws are explained, expectations are discussed and fines are outlined.***



Information on Amherst Town By-laws and Massachusetts General Laws regarding Alcohol/Noise/Unlawful Assembly

TBL A2 s6 Open Containers of Alcohol / Public Property

No person shall consume any alcoholic beverage nor possess or transport any open can, bottle or other container containing any alcoholic beverage outdoors on any town street, sidewalk, way and public property including but not limited to parking lots, parks, school playgrounds, recreation areas, or conservation areas.

Penalties- \$50 civil infraction or any person or persons who violate this by-law may be arrested without a warrant, provided that the violation occurs in the presence or view of a Police Officer.

TBL A2 s3 Unlawful Noise

It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the town of Amherst.

If the person or persons responsible for an activity cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

Penalties- Verbal Warning issued or \$100 civil infraction. Any person or persons who violate this by-law may be arrested without a warrant, provided that the violation occurs in the presence or view of a Police Officer.

TBL A24 s4 Keg Possession

Within the Town of Amherst, it shall be unlawful for any person other than a licensee at a licensed establishment or activity to sell or dispense a malt beverage from a keg, or to otherwise possess a keg, unless such person has been issued a valid keg license.

An application for a keg license may be picked up at the Amherst Police Department.

Penalties Any person in violation shall be fined \$200 for a first offense and \$300 for a second or subsequent offense.

MGL C269: S2 Refuse to depart or assist suppressing assembly

Section 2. Whoever, being present and being so commanded to assist in arresting such rioters or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, if required by such magistrate or officer to depart from the place, refuses or neglects so to do, shall be considered one of the rioters or persons unlawfully assembled, and shall be punished by imprisonment for not more than one year or by a fine of not less than one hundred dollars or more than five hundred dollars, or both. A police officer may arrest without a warrant any person who violates this section

MGL C138: §34C Minor Possession/Transporting Alcohol

Section 34C. Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses, transports or carries on his person, any alcohol or alcoholic beverages, shall be punished by a fine of not more than fifty dollars for the first offense and not more than one hundred and fifty dollars for a second or subsequent offense; provided, however, that this section shall not apply to a person between the ages of eighteen and twenty-one who knowingly possesses, transports or carries on his person, alcohol or alcoholic beverages in the course of his employment.

A police officer may arrest without a warrant any person who violates this section.
A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court, and said registrar shall thereupon suspend for a period of ninety days the license of such person to operate a motor vehicle

TBL A2 Nuisance House

The Town of Amherst will impose liability on property owners and other responsible persons for the public nuisances and harm caused by loud and unruly gatherings on private property and shall discourage the consumption of alcoholic beverages by underage persons at such gatherings

Public Nuisance - means a gathering on any premises in a manner which constitutes a violation of law or creates a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood. Unlawful conduct includes, but is not limited to excessive noise, excessive pedestrian and vehicular traffic, obstruction of public streets by crowds or vehicles, illegal parking, public urination, fights, disturbances of the peace, littering and the service of alcohol to underage persons.

It is unlawful for any person having control of any premises to knowingly host, permit, or allow a gathering to take place where at least one underage person consumes an alcoholic beverage, provided that person either knew or reasonably should have known that an underage person consumed an alcoholic beverage, and that person failed to take reasonable steps to prevent the consumption of alcohol by an underage person.

Penalties- Violators will be fined in the amount of \$300 for first and subsequent offenses.

The Amherst Police Department is committed to ensuring the safety of the residents of Amherst, the safeguarding of all constitutional guarantees and the protection of property. This mission will be accomplished by our commitment to rapid suppression of any and all riotous activities, and enforcement of all applicable Massachusetts General Laws and Town By-Laws. The above information is intended as a reference only. It is provided for you by the Amherst Police Department. It is intended as a reference only. More information can be obtained on line @ amherstma.gov or Mass.gov/legis/laws/mgl.